



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: DECEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 625262

PRESENT: MARILYN P. O'MARA, JUNE F. O'NEILL MEMBERS

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 4, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed August 1, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a security company as a part-time security guard at a nursing home, from November 21, 2021 until about April 8, 2022.

In January 2022, the claimant informed the employer that she was pregnant. In March 2022, the claimant submitted a request for FMLA through the employer's insurance company. The claimant requested a 12-week leave of absence to start after giving birth.

On or about April 8, 2022, the claimant notified the employer that she could no longer work and asked to be taken off the work schedule, because she was due to deliver her baby. The employer approved the claimant's request to be taken off the schedule. The employer told the claimant that her job was "safe and secure" and would be kept open for her.

On May 7, 2022, the claimant gave birth to her baby by C-section surgery. By notice dated May 11, 2022, the claimant was informed that her request for FMLA had been denied, because she had not worked there long enough to be eligible for Paid Family Leave benefits. Thereafter, the claimant decided not to return to work because she wanted a paid leave of absence. She did not inform the employer that she was not returning to work and filed a claim for benefits.

OPINION: The credible evidence establishes that the claimant filed a claim for benefits while on a leave of absence. The Court has held that the filing for Unemployment Insurance benefits while on a leave of absence does not constitute a voluntary leaving of employment (Matter of Wilner, 78 AD2d 563 [3d Dept 1980]). However, it is a factor to be considered in determining whether the claimant voluntarily left employment (See Appeal Board No 546402). Here, the claimant admitted that she did not return to work because she was denied a paid leave of absence. However, she was aware she was still on an approved unpaid leave of absence. The Board has not distinguished between paid leaves of absence and unpaid leaves of absence for purposes of determining whether a claimant took reasonable steps to preserve employment (See Appeal Board No. 614222). Under these circumstances, we conclude that the claimant's decision to not return to work constitutes a voluntary leaving of employment without good cause.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 4, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER

JUNE F. O'NEILL, MEMBER